Montgomery lawmakers worried about system that allowed possible double payments

By Miranda S. Spivack, Monday, March 28, 7:35 PM

Several Montgomery County Council members said Monday that they would like to follow the money, if only they could.

But after a 90-minute hearing in which top county and water commission officials struggled to explain $6.7 million in payments and credits to a developer for a project that cost about $3 million, the lawmakers said they were more confused and worried than before.

“It is very difficult to decipher where the money went,” said council member Nancy Navarro (D-Eastern County), who chaired the session to review a recent county inspector general’s report. The report described a convoluted system of payments and credits that appeared to have led Montgomery and the Washington Suburban Sanitary Commission (WSSC) to each reimburse the developer for the same pumping station and water main.

“I am not satisfied,” said Council President Valerie Ervin (D-Silver Spring). “It raised more questions than it resolved.”

About 1,300 residents of the west Germantown development, part of the Woodcliffe Development District for properties developed by Artery Hoyles Mill of Bethesda and Arcola Investment Associates of Hyattsville, are paying Montgomery $800 a household until 2025 to help the county defray the cost of infrastructure. Council members said they are worried that residents may be overpaying.

But Jennifer Barrett, the county’s finance director, said the inspector general had misunderstood the payment system.

“There were not double payments, because there were two different things going on,” Barrett said, responding to questions from council member Roger Berliner (D-Potomac-Bethesda), the only panel member to appear to disagree with the inspector general’s findings.

Barrett and other officials in the administration of County Executive Isiah Leggett (D) said that the system was legal and had been designed to allow growth in the county when bank lending was scarce and interest rates were expensive.

But that still left open questions about the wisdom of the system, even if it is legal, said council member Marc Elrich (D-At Large).

"It's too bad nobody blew the whistle on this," he said.

According to the report by Inspector General Thomas J. Dagley and Deputy Inspector General Christopher Giusti, some tried. The report said payments occurred even though senior officials in county government and the WSSC were aware in 1998 of the potential for double payments, and some WSSC officials tried to stop them.

The WSSC changed its procedures in 2004 to prohibit double payments, but the agency's chief finance official, Tom Traber, told the council that he did not know why.

The risk of double payments was also outlined in 2007, in a report by council staff members looking into reimbursement plans for the Clarksburg Town Center developer. Council staff members urged the council to change the law to forbid double payments, but no law was passed, council records show. Elrich said at the time that he and other council members thought the potential for double payment in Clarksburg was a one-time mistake, not a sign of a systemic problem.

The money trail begins with Montgomery making cash payments totaling $3.7 million in 2002 and 2003 to the developer, according to the inspector general's report.

The report said that the county had failed to produce specific payment information that would explain who got the money and what it was used for and that the WSSC provided detailed documents that had been audited.

Dagley described to the council a series of identical payments made by the county and the WSSC, and he told the council that legal agreements among the government agencies and the developer were inconsistent.

"There are discrepancies in legal documents that are unexplained," he said.

The WSSC, working off an agreement that predated the 2004 policy change, applied additional cash payments to the projects in 2006 totaling $1.87 million and credits totaling $1.1 million, finding that the projects were worth about $3 million, not the $3.7 million Montgomery had paid, the report said.

WSSC officials raised questions several times with Montgomery officials, suggesting that the county, not the developers, should receive WSSC credits, the report said.

The report said the inspector general's office contacted law enforcement officials to examine the findings, which Berliner also questioned.

"I have a responsibility as the county's inspector general to take any preliminary evidence . . . of possible criminal violations and report those . . . to the law enforcement community so they can use their expertise," Dagley said. "I have done that on a number of occasions in the past six years, and that is the case here."

In the fall, the council killed a special tax district in Clarksburg Town Center, saying it wasn’t working correctly. County staff members had found the possibility that the developer there could collect twice — from the county and the WSSC — for a water and sewer project, among other irregularities.

The county is looking at other ways to help developers finance roads, sewers and other infrastructure they need to build communities. As for the possibility of double payments, Ervin, Navarro and Elrich said they are working on legislation to prevent them and hope to introduce it soon.